

No. 14/13/87-6Lab/995.--In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar in respect of the dispute between the workman and the management of M/s Rama Fibres Ltd, Bamla (Bhiwani) Versus Shri Shri Niwas.

BEFORE SHRI B.R. VOHRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HISAR.

Reference No. 241 of 1990

Date of Receipt : 25th August, 1989

Date of decision : 17th November, 1994

SHRI SHRI NIWAS S/O SHRI CHHATTAR SINGH, C/O RAMA SUTA
MAZDOOR SANGH, 116, LABOUR COLONY, BHIWANI.

.. Applicant

Versus

M/S. RAMA FIBRES LTD., VILLAGE BAMLA, DISTRICT BHIWANI.

.. Respondent Management

President :

Shri Chetan Anand, for the workman.

Shri M.M. Kaushal, for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act'), the Governor of Haryana referred the following dispute between Shri Niwas and the above mentioned management for adjudication to this Court,--vide Labour Department letter No. Bwn./160-89/34064-69, dated the 8th August, 1989 :--

Whether termination of services of Sh. Shri Niwas is justified and in order ? If not, to what relief is he entitled ?

2. According to Shri Niwas, applicant, he had been working in the Blow Room Department of M/s. Rama Fibres Ltd., Bamla and that his work and conduct had been satisfactory throughout since 1st December, 1981, the date of his appointment. However, a charge-sheet was served upon him alleging misconduct on his part and the workman denied the same in his reply. It was followed by domestic enquiry. The workman has stated that subsequently, on receipt of enquiry report, he was dismissed from service with effect from 7th March, 1989. He has challenged the said action of the management on various grounds given in para 3 of the claim statement and had stated that no documents were supplied to him before starting the enquiry and the enquiry conducted in his case was not fair and proper and there had been

violation of principle of natural justice. Nextly, it was stated that the copy of enquiry report and other documents were not supplied to him and the management had adopted unfair labour practice. It was further stated that his dismissal was the result of his union activities, as he was active member of Rama Suta Mazdoor Sangh, Bhiwani.

3. The management, in its written statement, while denying the allegations made in the claim statement, stated that the workman alongwith his co-workers, knowingly and intentionally stopped working of his department, causing loss of production and he also instigated his co-workers not to work. He also threatened another worker with dire consequences in case he dared to run the machinery. According to the management, a charge-sheet was served upon the workman on the above lines and domestic enquiry was conducted against him. According to the management, the Enquiry Officer gave full opportunities to the workman to cross-examine the witnesses and to lead his defence and it was claimed that the enquiry conducted in this case was fair and proper. It was also denied that the management was prompted to take action against the workman on account of his trade union activities.

4. On the above pleadings of the parties, the following issues were framed on 15th March, 1991 by my learned predecessor :--

1. As per terms of reference.
2. Whether the management hold a just and proper domestic enquiry against the workman ? If so, to what effect ?
3. Relief.

5. Issue No. 2, regarding domestic enquiry was treated as preliminary issue. The parties led evidence on preliminary issue in support of their rival claims. I have heard Shri Chetan Anand, A.R. of the workman and Shri M.M. Kaushal, A.R. of the management and have gone through the case file. My findings on preliminary issue are as under :--

Issue No. 2

6. The management examined Balraj Singh, MW-1 and Shri V. Acharya, Advocate, Bhiwani as MW-2. According to Balraj Singh, on 12th September, 1988, the workman, who reported for duty at 3.00 P.M., stopped running the machines and simultaneously co-workers Raj Kumar and Vijay also stopped working and when he returned from the G.M. Office, where he was summoned, he found the workman and his two companions having already left the factory premises after stopping the machines. According to him, after about $\frac{1}{2}$ hour, he started running the machines and thereafter workman and his two companions returned and threatened him either to stop the machine or to face consequences. He further deposed that on the following day, the workman again threatened him, but he remained undeterred and continued running the machine. On the same evening, the workman came to his house in the company of two workers, aforementioned and threatened his wife to prevail upon her husband or else he would be liquidated thus rendering her a widow. He further added that on

14th September, 1988, he lodged a report with Sadar Police Station, Bhiwani.

7. Shri V. Acharya, Advocate, MW-2 is the Enquiry Officer in this case. According to him he conducted enquiry in this case and Shri Niwas workman participated and he started enquiry on 19th February, 1988. He also stated that Shri Niwas submitted applications Ex. MW-2 and Ex. MW-4 and he gave reply accordingly,--vide Ex. MW-3 and Ex. MW-5 respectively and has added that on another application submitted by the workman,--vide Ex. MW-6, he allowed the workman to be represented by Shri Sham Sunder. He further added that thereafter, he recorded evidence led by both the parties and gave opportunity to both of them to cross-examine witnesses of the parties. He testified the proceedings of enquiry as Ex. MW-7 and his enquiry report as Ex. MW-8.

8. The workman, who appeared as WW-1 has admitted that he was served with a charge-sheet Ex. W-2 and that he submitted reply thereto, the copy of which is Ex. W-5. He, however, stated that he asked for certain documents from the management,--vide Ex. W-7, but they were not supplied to him and then he gave application Ex. W-8 to the Enquiry Officer. He claimed that proper opportunity was not given to him to cross-examine the witnesses of the department.

9. A copy of charge-sheet served upon the workman is Ex. W-2 and the first contention raised by Shri Chetan Anand, A.R. of the workman is that the list of witnesses was not supplied to the workman alongwith charge-sheet. It is to be seen that this objection was never raised by the workman, when he submitted reply to the charge-sheet,--vide Ex. W-3. However, when the workman appeared before the Enquiry Officer, he raised this objection and the Enquiry Officer made the copy of list of witnesses and a copy of complaint, available to the workman, as is evident from Ex. MX-1 and it is to be noted that the workman has admitted his signatures in the circle on Ex. MX-1. It is also to be noted that on the request of the workman, the Enquiry Officer allowed him to be represented by Shri Chetan Anand in the first instance and subsequently on the inability of Shri Chetan Anand to appear, to be assisted by Shri Sham Sunder. This is evident from the enquiry proceedings Ex. MW-7. A perusal of the enquiry proceedings would show that the workman not only participated in the enquiry, but he was assisted by Shri Sham Sunder throughout and the witnesses of the management were cross-examined by the workman. It would also be seen that the workman produced his defence witnesses, namely, Main Pal and Dev Karan and also made his own statement on oath and,--vide statement dated the 14th February, 1989, the workman closed his defence evidence. In this way, the workman cannot be allowed to say that he was not allowed to lead his defence evidence as contained in his application dated the 25th January, 1989 (Ex. W-10). It is, therefore, manifest that full opportunity was afforded by the Enquiry Officer to the workman to cross-examine the witnesses of the department and lead his defence and further the workman was allowed to be assisted by co-worker Shri Sham Shunder, during the enquiry.

10. Shri Chetan Anand, A.R. of the workman argued hotly that the workman in his application submitted before the Enquiry Officer,

viz. Ex. W-8 and Ex. MW-4, had also made a prayer for change of place of enquiry but as is evident from Ex. MX-2, this prayer was kept pending by the Enquiry Officer,--vide his order dated the 19th December, 1988, but no orders were passed thereafter. It is, however, to be noted that the workman subsequently did not press this prayer, when the evidence was recorded by the Enquiry Officer and the workman has also failed to show as to whether he was prejudiced by the fact that the enquiry was conducted in the premises of the management. In the absence of any prejudice shown by the workman, this objection now cannot be raised by the workman.

11. Shri Chetan Anand, A.R. of the workman further stressed that the report of the Enquiry Officer was based on 'no evidence' and the same was vague and no prudent person would hold the workman guilty on the basis of scanty evidence led by the management before the Enquiry Officer. I have perused the statements made by 3 witnesses of the management before the Enquiry Officer vis-a-vis the charges against the workman and the total denial of the workman in his reply to charge-sheet and I am of the opinion that this argument of the A.R. of the workman has to be negatived. Narender Singh, MW-1, Sunil Batta, MW-2 and Balraj Singh, MW-3 examined before the Enquiry Officer, had not only proved the charge of closure of factory and stoppage of machines, but also had proved the charge of insubordination and thereat given by the workman and in wake of this evidence, it can not be said that the enquiry report was based on no evidence.

12. Another submission made by Shri Chetan Anand, A.R. of the workman is that the copy of enquiry report was not supplied to the workman when the second show cause notice was served upon him. The dismissal order in this case was passed on 7th March, 1989, while the enquiry was completed and report submitted by the Enquiry Officer on 25th February, 1989. At that time, it was not obligatory for the management to supply copy of enquiry report to the workman alongwith second show cause notice and as such, failure to supply copy of enquiry report to the workman does not vitiate the action taken, as held by Hon'ble Supreme Court in the authority reported as UNION OF INDIA Versus MOHD. RAMZAN KAHN, AIR 1991-SC-491.

13. Shri Chetan Anand, A.R. of the workman, also argued that it was a case of discrimination, as Virender, another workman, was also dismissed on similar charges, but was later on reinstated by the management and in support of his argument, he relied upon the observations made by our own High Court in the authority reported as DARSHAN SINGH Versus STATE OF PUNJAB, 1991 (2) SCT-714 and the observations of Culcutta High Court in the authority reported as JOGENDRA CHANDRA DAS Versus UNION OF INDIA, 1991 (3) SCT-390. There is no dispute with the law enunciated in these authorities. However, there is no material on the file to show that the charges served upon Virender, afore-mentioned and the workman, were identical and there is also no material on the file to show that Virender was taken on duty later on. The workman has not adduced in evidence, copy of charge-sheet served on Virender and the subsequent order reinstating him and in the absence of such material, it cannot be said that the workman had been discriminated as claimed.

14. In the light of discussion above, I hold that the domestic enquiry conducted by the management in this case was just and fair and the preliminary issue is decided in favour of the management.

15. In the wake of above findings, as the workman was dismissed from service on account of misconduct proved in the domestic enquiry, the same does not amount to "retrenchment" as defined in Section 2(00) of the Act and the dismissal order passed in this case was justified and in order and the workman is not entitled to any relief. The reference is answered accordingly. Costs made easy.

(Sd.)....,

Dated the 17th November, 1994.

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Hisar.

Endst. No. 2418, dated the 23rd November, 1994

A copy, with spare copy, is forwarded to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh for necessary action.

(Sd.)....,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Hisar.

No. 14/13/87-6Lab./996.--In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar respect of the dispute between the workman and the management of M/s Rama Fibres Ltd, Bamla (Bhiwani) Versus Raj Kumar.

BEFORE SHRI B.R. VOHRA, PRESIDING OFFICER, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, HISAR

Reference No. 231 of 1990

Date of receipt 25-8-89

Date of decision 17-11-94

SHRI RAJ KUMAR, S/O DALIP SINGH, C/O RAMA SUTA MAZDOOR SANGH,
116, LABOUR COLONY, BHIWANI .. Applicant

Versus

M/S RAMA FIBRES LTD, VILLAGE BAMLA, DISTT. BHIWANI
Present : .. Respondent Management

Shri Chatan Anand for the workman.

Shri M.M. Kaushal for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short, 'the

Act'), the Governor of Haryana referred the following dispute between Raj Kumar and the above mentioned management for adjudication to this Court,—vide Labour Department letter No. Bwn/161-89/33603-609, dated 8th August, 1989 :--

Whether termination of services of Raj Kumar is justified and in order ? If not, to what relief is he entitled ?

2. According to Raj Kumar, applicant, he had been working in the Blow Room Deptt. of M/s Rama Fibres Ltd., Bamla and that his work and conduct had been satisfactory throughout since 1984, i.e. from his initial appointment. However, a charge-sheet was served upon him alleging misconduct on his part and the workman denied the same in his reply. It was followed by domestic enquiry. The workman has stated that subsequently, on receipt of enquiry report, he was dismissed from service with effect from 7th March, 1989. He has challenged the said action of the management on various grounds given in para 3 of the claim statement and had stated that no documents were supplied to him before starting the enquiry and the enquiry conducted in his case was not fair and proper and there had been violation of principles of natural justice. Nextly, it was stated that the copy of enquiry report and other documents were not supplied to him and the management had adopted unfair labour practice. It was further stated that his dismissal was the result of his union activities, as he was an active member of Rama Suta Mazdoor Sangh, Bhiwani.

3. The management, in its written statement, while denying the allegations made in the claim statement, stated that the workman alongwith his co-workers, knowingly and intentionally stopped working of his department, causing loss of production and he also instigated his co-workers not to work. He also threatened another worker with dire consequences in case he dared to run the machinery. According to the management, a charge-sheet was served upon the workman on the above lines and domestic enquiry was conducted against him. According to the management, the Enquiry Officer gave full opportunities to the workman to cross-examine the witnesses and to lead his defence and it was claimed that the enquiry conducted in this case was fair and proper. It was also denied that the management was prompted to take action against the workman on account of his trade union activities.

4. On the above pleadings of the parties, the following issues were framed on 15th March, 1991 by my learned predecessor :--

1. As per terms of reference.
2. Whether the management hold a just and proper domestic enquiry against the workman ? If so, to what effect ?
3. *Relief

5. Issue No. 2, regarding domestic enquiry was treated as preliminary issue. The parties led evidence on preliminary issue in support of their rival claims. I have heard Shri Chetan Anand, A.R. of the workman and Shri M.M. Kaushal, A.R. of the management and have

gone through the case file. My findings on preliminary issue are as under :-

Issue No. 2 :

6. The management examined Balraj Singh, MW-1 and Shri V. Acharya, Advocate, Bhiwani as MW-2. According to Balraj Singh, on 12th September, 1988, the workman, who reported for duty at 3.00 P.M., stopped running the machine and simultaneously co-workers Shri Niwas and Vijay also stopped working and when he returned from the G.M. office, where he was summoned, he found the workman and his two companions having already left the factory premises after stopping the machines. According to him, after about $\frac{1}{4}$ hour he started running the machines and thereafter workman and his two companions returned and threatened him either to stop the machine or to face consequences. He further deposed that on the following day, the workman again threatened him, but he remained undeterred and continued running the machine. On the same evening, the workman came to his house in the company of two workers, aforementioned and threatened his wife to prevail upon her husband or also he would be liquidated thus rendering her a widow. He further added that on 14th September, 1988, he lodged a report with Sadar Police Station, Bhiwani.

7. Shri V. Acharya, Advocate, MW-2 is the Enquiry Officer in this case. According to him, he conducted enquiry in this case and Raj Kumar, workman participated and he started enquiry on 19th February, 1988. He also stated that Raj Kumar submitted applications Ex.MW-2 and Ex.MW-4 and he gave reply accordingly,--vide Ex.MW-3 and Ex.MW-5 respectively and has added that on another application submitted by the workman,--vide Ex.MW-6, he allowed the workman to be represented by Shri Sham Sunder. He further added that thereafter, he recorded evidence led by both the parties and gave opportunity to both of them to cross-examine witnesses of the parties. He testified the proceedings of enquiry as Ex.MW-7 and his enquiry report as Ex.MW-8.

8. The workman, who appeared as WW-1, has admitted that he was served with a charge-sheet Ex.MS-3 and that he submitted reply, the copy of which is Ex.W-5. He, however, stated that he asked for certain documents from the management,--vide Ex.W-6, but they were not supplied to him and then he gave application Ex.W-9 to the Enquiry Officer. He claimed that proper opportunity was not given to him to cross-examine the witnesses of the management.

9. A copy of charge-sheet served upon the workman is Ex. MS-3 and the first contention raised by Shri Chetan Anand, A.R. of the workman is that the list of witnesses was not supplied to the workman alongwith charge-sheet. However, when the workman appeared before the Enquiry Officer, he raised this objection and the Enquiry Officer made the copy of list of witnesses and a copy of complaint, available to the workman, as is evident from Ex.MW-3 and it is to be noted that

the workman has admitted his signatures in the circle on Ex.MW-3. It is also to be noted that on the request of the workman, the Enquiry Officer allowed him to be represented by Shri Chetan Anand in the first instance and subsequently on the inability of Shri Chetan Anand to appear, to be assisted by Shri Sham Sunder. This is evident from the enquiry proceedings Ex.MW-7. A perusal of the enquiry proceedings would show that the workman not only participated in the enquiry, but he was assisted by Shri Sham Sunder through out and the witnesses of the management were cross-examined by the workman. It would also be seen that the workman produced his defence witnesses, namely, Main Pal and Dev Karan and also made his own statement on oath and,--vide statement dated 14th February, 1989, the workman closed his defence evidence. In this way, the workman cannot be allowed to say that he was not allowed to lead his defence evidence as contained in his application, dated 25th January, 1989 (Ex.W-9). It is, therefore, manifest that full opportunity was afforded by the Enquiry Officer to the workman to cross-examine the witnesses of the department and to lead his defence and further the workman was allowed to be assisted by co-worker Shri Sham Sunder, during the enquiry.

10. Shri Chetan Anand A.R. of the workman argued hotly that the workman in his application submitted before the Enquiry Officer, viz Ex.W-7 and Ex.MW-4, had also made a prayer for change of place of enquiry but as is evident from order dated 19th December, 1988 contained in Ex.MW-7 that this prayer was kept pending by the Enquiry Officer,--vide his order dated 19th December, 1988, but no orders were passed thereafter. It is, however, to be noted that the workman subsequently did not press this prayer, when the evidence was recorded by the Enquiry Officer and the workman has also failed to show as to whether he was prejudiced by the fact that the enquiry was conducted in the premises of the management. In the absence of any prejudice shown by the workman, this objection now cannot be raised by the workman.

11. Shri Chetan Anand, A.R. of the workman further stressed that the report of the Enquiry Officer was based on no evidence and the same was vague and no prudent person would hold the workman guilty on the basis of scanty evidence led by the management before the Enquiry Officer. I have perused the statement made by 3 witnesses before the Enquiry Officer vis-a-vis the charges against the workman and the total denial of the workman in his reply and I am of the opinion that this argument of the A.R. of the workman has to be negatived. Narender Singh, MW-1, Sunil Batta, MW-2 and Balraj Singh, MW-3 examined before the enquiry officer, had not only proved the charge of closure of factory and stoppage of machines, but also had proved the charge of insubordination and threats given by the workman and in wake of this evidence, it can not be said that the enquiry report was based on no evidence.

12. Another submission made by Shri Chetan Anand, A.R. of the workman is that the copy of enquiry report was not supplied to the workman when the second show cause notice was served upon him. The

dismissal order in this case was passed on 7th March, 1989, while the enquiry was completed and report submitted by the Enquiry Officer on 25th February, 1989. At that time, it was not obligatory for the management to supply copy of enquiry report to the workman alongwith second show cause notice and as such, failure to supply copy of enquiry report to the workman does not vitiate the action taken, as held by Hon'ble Supreme Court in the authority reported as UNION OF INDIA Vs MOHD. RAMZAM KHAN, AIR-1991-SC-491.

13. Shri Chetan Anand, A.R. of the workman, also argued that it was a case of discrimination, as Virender another workman, was also dismissed on similar charges, but was lateron reinstated by the management and in support of his argument, he relied upon observations made by our own High Court in the authority reported as DARSHAN SINGH Vs STATE OF PUNJAB, 1991 (2) SCT-714 and the observations of Culcutta High Court in the authority reported as JOGENDRA CHANDRA DASS Vs UNION OF INDIA 1991(3)SCT-390. There is no dispute with the law enunciated in these authorities. However, there is no material on the file to show that the charge-sheets served upon Virender, afore-mentioned and the workman, were identical and there is also no material on the file to show that Virender was taken on duty lateron. The workman has not adduced in evidence, copy of charge-sheet served on Virender and the subsequent order reinstating him and in the absence of such material, it cannot be said that the workman had been discriminated as claimed.

14. In the light of discussion above, I hold that the domestic enquiry conducted by the management in this case was just and fair and the preliminary issue is decided in favour of the management.

15. In the wake of above findings, as the workman was dismissed from service on account of misconduct proved in the domestic enquiry, the same does not amount to "retrenchment" as defined in Section 2(00) of the Act and the dismissal order passed in this case was justified and in order and the workman is not entitled to any relief. The reference is answered accordingly. Costs made easy.

Dated the 17th November, 1994.

B.R. VOHRA,
Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Hisar.

Endorsement No. 2419, dated the 23rd November, 1994

A copy, with spare copy, is forwarded to the Financial Commissioner and Secretary to Government Haryana, Labour and Employment Deptt., Chandigarh for necessary action.

B.R. Vorha,
Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Hisar.